

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

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|-----------------------------|---|--------------------------|
| ARTHUR HIRSCH, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | CA NO. 5:10-cv-00134-HGD |
| |) | |
| WILLIAM G. MATHEWS, et al., |) | |
| |) | |
| Defendants. |) | |

MOTION FOR SUMMARY JUDGMENT OF TRACY LUNA AND TERRY
JOHNSON AS TO FOURTH AMENDMENT AND STATE LAW CLAIMS
ARISING OUT OF PLAINTIFF'S ARREST

Defendants Tracy Luna and Terry Johnson hereby move the court to enter summary judgment in their favor in this action pursuant to Fed. R. Civ. P. 56 as to all claims alleged against them in the plaintiff's amended complaint in this case (Doc. no. 58) under the Fourth Amendment to the United States Constitution or under state law arising out of the arrest of plaintiff Arthur Hirsch.¹ There are no genuine issues as to any material facts, and said defendants are entitled to judgment in their favor as a matter of law on the above-referenced claims. In support of their motion, said defendants state as follows:

¹ Defendants Luna and Johnson have filed separate motions to dismiss and for summary judgment as well. This motion for summary judgment addresses the claims which were not made the subject of the motions to dismiss and for summary judgment. In other words, through one procedural vehicle or another, said defendants have sought a ruling in their favor as to all claims alleged against them in the complaint.

1. Plaintiff Hirsch's complaint alleges Fourth Amendment-based unlawful arrest and state law-based false arrest / imprisonment claims arising out of Sergeant Luna's initiation of the encounter with Hirsch, an additional Fourth Amendment-based unlawful arrest and unlawful search claim arising out of the questions asked of Hirsch, removal of his handgun, and his arrest for carrying a concealed weapon without a permit. Hirsch's complaint also asserts a Fourth Amendment-based excessive force claim and state law claims for assault / battery arising out of the use of handcuffs incident to his arrest, and state law trespass claims arising out of the confiscation of his handgun.

2. The evidence in this case shows that said defendants are entitled to qualified immunity and state-agent / peace officer discretionary function immunity as to all of the above-referenced claims. The officers had actual or arguable reasonable suspicion to detain Hirsch, valid legal grounds for removing and confiscating his handgun, and actual or arguable probable cause to effectuate his custodial arrest. Moreover, there is no merit to Hirsch's claim that it was unlawful to utilize handcuffs in connection with the arrest, and any harm Hirsch claims to have suffered as a result clearly was *de minimis*.

3. This motion is supported by the the affidavit of Tracy Luna contained in the evidentiary submission filed on March 12, 2010 in support of the motion for summary judgment of said defendants which was directed to similar allegations in

plaintiff's original complaint, and is also supported by the brief filed contemporaneously herewith.

s/ George W. Royer, Jr.

George W. Royer, Jr.

s/ David J. Canupp

David J. Canupp

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Attorneys for Defendants Tracy Luna and Terry Johnson

CERTIFICATE OF SERVICE

I hereby certify that I have filed the foregoing upon with the Clerk of the Court using the CM/ECF system and that I have served a copy of the foregoing by depositing a copy of the same in the United States mail, postage prepaid and properly addressed to:

Arthur Hirsch
3121 Buffalo Road
Lawrenceburg, TN 38464

on this the 22nd day of March, 2010.

s/ George W. Royer, Jr.

George W. Royer, Jr.